

EXHIBIT 43

In N.Y.C. Jail System, Guards Often Lie About Excessive Force (Published 2021)

More than half of the roughly 270 correction officers disciplined over a 20-month period lied to investigators or filed incomplete or inaccurate reports.

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The city jail system, including the notorious Rikers Island complex, has long been a source of complaints of brutality by guards. Credit... Richard Perry/The New York Times

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One New York City Correction officer struck a jailed person in the face for no legitimate reason. Another put a detainee in a banned chokehold several times. A third failed to stop subordinates from using unnecessary force, according to newly released discipline records.

But what was equally notable was what happened after the encounters: In each case, the guards lied or provided inaccurate information about what had occurred.

In fact, more than half of the officers in [New York City's jail system](#) who were disciplined over a 20-month period gave false, misleading or incomplete accounts on official forms or in statements to investigators, according to a New York Times analysis of records recently made public after a long court battle.

The data suggests pervasive attempts by guards to cover up uses of force or other infractions at a time when the city has tried to rein in violence in the [jails](#).

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Councilman Keith Powers, a Manhattan Democrat who heads the criminal justice committee, said the data "highlights how broken this process is and a need to make real efforts to reform it."

"It's a turning point to providing more visibility to an often invisible criminal justice system," he said.

The city jail system, including the notorious Rikers Island complex, has long been a source of [complaints of brutality by guards](#). Six years ago, when the city entered [a landmark legal settlement](#) with federal prosecutors, a key part of the plan was to hold officers accountable for misconduct in a timely way, including a more transparent accounting of episodes involving force.

"The entire system of use-of-force reporting depends upon officers giving accurate facts and telling the truth about what happened," said Mary Lynne Werlwas, director of the Legal Aid Society's Prisoners' Rights Project. Unless there is video evidence, Ms. Werlwas added, "the officer's word gets credited when it is an incarcerated person's word against an officer's."

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Until now, the disciplinary records of correction officers and their supervisors had been largely kept secret by state law.



Protesters gathered at City Hall in 2019, as the City Council voted on a plan to close Rikers Island. Credit... Joshua Bright for The New York Times

That changed last summer when, in response to pressure from protests against police violence and racism after the killing of George Floyd, New York legislators repealed 50-a, the section of the state civil rights statute that shielded most law enforcement misconduct records from the public.

The Crisis at Rikers Island

Amid the pandemic and a staffing emergency, New York City's main jail complex has been embroiled in a continuing crisis.

- **2022 Deaths:** Sixteen people died in the city's jail system last year, the most since 2013. Deaths this year are [on pace to be even higher](#).
- **Gaming the Numbers:** Louis Molina, New York City's jail commissioner, pushed for a dying man's release from Rikers in [an apparent bid to limit the prison's death count](#).

- **Inside Rikers:** Videos obtained by The Times [reveal scenes of violence](#) and offer vivid glimpses of the [lawlessness that has taken hold](#).
- **Decades of Dysfunction:** For years, city officials have presided over [shortcuts and blunders](#) that have led to chaos at the jail complex.

The unions representing police and correction officers and their supervisors quickly filed a lawsuit in federal court to stop [the release of the disciplinary records](#), but a federal judge and an appeals panel eventually rejected their arguments, including the contention that releasing the records could endanger officers. The city released a database detailing disciplinary actions against correction officers in March.

Taken together, the revelations contained in the database paint a picture of ongoing violence by guards in the troubled city jail system, confirming the findings of a federal monitor last fall.

Lying on official forms or to investigators was a common thread. About 56 percent of the more than 270 correction officers who were disciplined from January 2019 to August 2020, including a dozen supervisors, lied, misled investigators or filed incomplete or inaccurate reports, the records show. At least 17 officers made false statements in interviews with officials who were looking into allegations.

The data released by the department did not specify how the officers were found to have provided false information, but typically investigators compare officers' statements with other evidence, such as video footage and medical records documenting injuries.

One officer, Lawrence Wallace, a 15-year veteran of the department, was disciplined eight times in less than two years for using excessive force on people held in city jails, including deploying banned restraints and pepper spray. In four of those cases, he lied on official reports about what had happened, and at least once he made false statements to investigators, the records show.

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Correction officials allowed Mr. Wallace to keep his job but docked him 55 vacation days and placed him on probation for two years, a decision the department called a “holistic approach.” Reached by telephone, Mr. Wallace declined to comment.

“I don’t know any workplace where five, six, seven violations of major abuses would not result in very serious punishment, if not loss of employment,” said Donna Lieberman, the executive director of the New York Civil Liberties Union.

Joseph Russo, president of the union representing deputy wardens and assistant deputy wardens, acknowledged that jail staff members sometimes make misleading statements, but he said he thought some were honest mistakes. He argued that officers and supervisors simply do not remember certain interactions, or their memories are spotty because of the stress surrounding the events.



Newly released discipline records paint a picture of ongoing violence by guards.
Credit... Todd Heisler/The New York Times

“To recall these details in great detail is very difficult,” Mr. Russo said.

Benny Boscio Jr., president of the Correction Officers' Benevolent Association, said in a statement that the majority of the 8,130 officers in his union did not have "a single disciplinary charge."

City correction department officials also said the reporting errors were not always intentional. To cut down on lapses, the department created a new course for officers to improve their writing skills and to teach them how to complete official incident reports, officials said. The department has also provided counseling and retraining for officers.

Some gaps in reporting, however, are purposeful cover-ups, correction officers said privately, speaking on the condition of anonymity to protect their employment. One said he had witnessed colleagues use excessive force and omit their actions from official records — for instance, twisting a man's limb after he stopped resisting, or using pepper spray for longer than allowed.

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Another staff member said he had seen officers huddle on Rikers Island to decide what statements to make on official forms. He said a captain once also asked him to change the time of an incident on a report to hide when it took place.

The data offered the most complete portrait to date of staff discipline in the city's lockups, but the records were still very limited. They identified the officers only by last name, with a brief description of the offense and the outcome.

The records did not include unsubstantiated allegations or cases in which the accused officer was cleared of wrongdoing. Nor did they contain at least five guards who were fired in the past two years. [Three of those officers](#) had been [criminally charged](#) with beating incarcerated people and then covering up the assaults, according to the Bronx district attorney's office. Another had been [arrested in Queens on a drunk-driving charge](#).

The data also did not include officers disciplined for drug smuggling or sex crimes. Drug smuggling allegations are generally referred to local prosecutors, officials said, and there were no substantiated rape allegations during the 20-month period in question.

Still, the records showed that, in general, most guards who were brought up on departmental charges of using excessive force escaped serious punishment.

Nine of the more than 270 guards resigned or retired under pressure, the data showed. Twenty-four officers were suspended, and 17 additional officers were placed on probation, which lasted from one to four years. (Some of the suspended officers were also put on probation.) Most of the rest lost vacation days.

Six of the nine officers who resigned or retired had lied or filed incomplete reports about an inappropriate use of force, the records show. "We do not tolerate false reporting, or excessive or unnecessary uses of force under any circumstances," said Jason Kersten, a spokesman for the Department of Correction.

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Of the 11 officers in the data with at least three disciplinary charges for misconduct, only one was suspended. None were dismissed.

The suspended officer, Captain Quincy Oudkerk, was found, among other things, to have kicked an inmate who did not pose a threat and then to have lied about the force he used, records showed. He was suspended for 28 days. Mr. Oudkerk declined to comment when reached by phone.



The records showed that most guards who were brought up on departmental charges for using excessive force escaped serious punishment. Credit... Richard Perry/The New York Times

While the database provided just bare-bones description of each incident, more detailed allegations have emerged in lawsuits filed against Mr. Wallace.

In a 2015 suit, Arthur Ceasar said Mr. Wallace had thrown a pair of shoes at him and pummeled him in a cell at the Manhattan Detention Center, sending him to the hospital.

That same year, Mr. Wallace and several other guards were accused in a second lawsuit of beating another person in jail, Basheer Bajas, so badly that he had internal bleeding in his left eye and severe headaches.

In January 2016, Shymell Ephron said in a third lawsuit that Mr. Wallace had punched him repeatedly in the head while he was being detained. The city settled with Mr. Ephron for \$3,000.

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The same year, Tobias Anderson, who is also listed in court records as Olivia Anderson, said in a fourth lawsuit that Mr. Wallace called

him a homophobic slur and purposely dropped him down a flight of stairs in a transgender housing unit.

Asked why Mr. Wallace was still employed by the department despite being disciplined eight times in connection with seven encounters, the correction department said in a statement that officials had considered “the totality of the circumstances.” Penalties are not determined by the number of violations a correction officer has pending, the department said.

Mr. Wallace racked up another seven charges while he was waiting for the first allegation against him in 2016 to be resolved, the records showed. Such delays are not unusual. Roughly 46 percent of the cases took two years or more to resolve, the data showed.

In one extreme case, it took officials just over six years to discipline one guard, Carlos Rodriguez, who failed to notify a supervisor about using force on an inmate and later falsified a report in March 2014.

A correction department spokesman, Patrick Rocchio, said the department’s disciplinary process was often slowed down because outside agencies, like the city Department of Investigation or state and federal prosecutors, were also investigating.

At least three other officers besides Mr. Wallace were disciplined multiple times, the city data showed. Patrick Alicea, a 10-year veteran, was found to have used excessive force five times over a nine-month period and to have twice provided false statements on official forms. He was demoted from captain to officer.

Two other officers, Maximo Matos and Brian Saryian, who have both been on the force for eight years, were each disciplined on four separate occasions for using improper force, the data showed. Both officers also falsified official statements. Mr. Matos forfeited 60 days of vacation, Mr. Saryian, 55.

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Mr. Saryian declined to comment when reached by phone. Mr. Alicea did not respond to requests for comment and Mr. Matos could not be reached.

Adam Playford contributed data analysis.

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